

1986

General Motors Acceptance Corporation, a New York Corporation v. Hector Martinez and Manuel M. Rivera : Brief of Appellant

Utah Supreme Court

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Jay V. Barney; attorney for plaintiff.

Mark S. Miner, William J. Hansen; attorneys for defendants.

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BRIEF

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IN THE SUPREME COURT

DOCKET NO. 860365-CA STATE OF UTAH

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GENERAL MOTORS ACCEPTANCE
CORPORATION, a New York
Corporation,

Plaintiff-Respondent,

vs.

HECTOR MARTINEZ and MANUEL M.
RIVERA,

Defendant-Appellants,

vs.

GREAT EQUITY LIFE INSURANCE
COMPANY OF CHICAGO, ILLINOIS,
et al.,

Third-Party Defendants-
Respondents.

Supreme Court No. 860429

860365-CA

Category 13

* * * * *

APPELLANT'S BRIEF ON APPEAL

* * * * *

On Appeal from the Third Judicial District Court
of Salt Lake County, State of Utah
The Honorable Dean E. Conder Presiding

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Equity Life Insurance Company

Clerk, Supreme Court, Utah

IN THE SUPREME COURT

STATE OF UTAH

* * * * *

GENERAL MOTORS ACCEPTANCE
CORPORATION, a New York
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LIST OF ALL PARTIES

1. Appellants, Hector Martinez and Manuel M. Rivera, represented by Mark S. Miner, 525 Newhouse Building, 10 Exchange Place. Salt Lake City, Utah 84111. Hector Martinez is the son of Manuel M. Rivera who is totally disabled and must have dialysis three times a week.
2. Respondents, General Motors Acceptance Corporation, a New York Corporation, represented by Jay V. Barney, 45 East Vine Street, Murray, Utah 84107.
3. Third-Party Respondents, Great Equity Life Insurance Company of Chicago, Illinois, et al., represented by William J. Hansen, 900 Kearns Building, Salt Lake City, Utah 84101.

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STATEMENT OF ISSUES PRESENTED ON APPEAL

1. What is legal tender and what is required under our "Legal Tender Statute" in order to terminate the running of interest? Does a conditional draft which contains a complete release of the within pending law suit; and, a complete satisfaction of the un-liquidated judgment **terminate interest on a judgment that had never been entered?**

2. In a **replevin action**, may the District Judge ignore the Court approved Replevin Bond and ignore the approved Supersedeas Bond (Finance Company's Attorney recognized that said approved bonds were in the file) (Tr-735); enter a judgment; issue a garnishment; satisfy the judgment; all within three (3) days, in violation of Rule 2.9 and thereby deprive the (defendants-appellants), of their Utah Supreme Court award; and their right to attack said judgments or to appeal said judgments?

3. Was the "Nunc Pro Tunc" judgment made and entered on February 5, 1982 dating said judgment back to December 4, 1981 a void judgment? Did said **retroactive** judgment defeat defendants right of appeal in that Rule 2.9 was never complied with?

4. Was the "Nunc Pro Tunc" judgment granting \$2,500.00 Attorney fees, without supporting evidence, **void?**

5. Was the granting of an additional \$1,000.00 attorney fees for appellate work claimed to have been done on an appeal allowable under Utah law? When said case was **never** appealed to the Supreme Court!

6. Great Equity Insurance Company should pay all Attorneys fees in that the Insurance company was the wrongdoer.

NATURE OF THE CASE.

1. The Utah Supreme Court ordered a judgment to be entered in favor of the defendants-appellants Hector Martinez and Manuel Rivera. See case No. 18072, filed May 24, 1983. (Tr-534) This judgment was not entered until **June 23, 1986**. Hector Martinez and Manuel Rivera, appellants and defendants, herein, maintain that under these circumstances Judge Conder erred in ignoring:

(a) **The Replevin bond and the Supersedeas bond** in the file. See (Tr-100A); (Tr-103); (Tr-599-601)

(b) Judge Conder, in an attempt to frustrate the defendants judgment and right to appeal, violated Rule 2.9.

(c) In this case, said judgment and order was entered on June 23, 1986 (Tr-688-712 inclusive). Without notice, the Court then permitted the issuance of a garnishment **on the same day**, (June 23, 1986).

(d) Then the Court, **within three days**, without any Notice whatsoever to Defendants, accepted an answer to the garnishment from the Insurance Company prepared by William J. Hansen, the Insurance Company's Counsel, and entered a garnishee judgment thereon on the 26th day of June 1986. The Court again, without notice to the defendants, made and entered a garnishee judgment;

and immediately satisfied said judgment. See (Tr-688 to 712) inclusive. This wrongful conduct resulted in the taking of the defendants money judgment, which was ordered entered by the Utah Supreme Court, and, handing it over to General Motors Acceptance Corporation summarily- while the file was concealed and supposedly lost. See (Tr-707). Violating Rule 2.9 in its entirety.

(e) The Finance Company and the Insurance Company committed an abuse of process in that they knew that the defendants intended to appeal said cause a Notice of Intent to Appeal (Tr-706) having been mailed to all parties on the 26th day of June, 1986, and said file having therein a good and sufficient Replevin Bond (Tr-58;59) and a good and sufficient Supersedeas Bond (Tr-599-601); (Said sureties having been duly examined and accepted by the Court Tr-100A.)

THE "NUNC PRO TUNC" JUDGMENT

2. In regard to the "Nunc Pro Tunc" judgment, defendants Hector Martinez and Manuel Rivera's counsel was completely misled concerning a supposed hearing that was to be held December 2, 1981; on this date the entire cause was on appeal to the Utah Supreme Court; said cause having been appealed on October 19, 1981; the file was devoid of any judgments until February 5, 1981 (Tr-539). In addition to the deception, The Finance company had failed to present any evidence of attorneys fees to either the

Court or the jury. It was defendants position that the Finance Company had waived their attorneys fees; there was no judgment or order in the file; no notices of the "Nunc Pro Tunc" judgments were ever served on the defendants after their signing.. When the defendants were alerted to the fact that a "Nunc Pro Tunc" judgment had been entered the defendants right to appeal or challenge said judgment had long expired. Jay V. Barney states in his brief (February, 1984) Page 5;: "Judge Conder, in the presence of Counsel, signed the judgment and order as December 4, 1981, but indicated "Nunc Pro Tunc" and designated his date of signature as "2/5/82;" Mr Barney certainly knew that "back-dating" of the judgment was in complete violation of Rule 2.9. No notice of this signing was given to the appellants or their attorney.

THE GRANTING OF ATTORNEYS FEES HEREIN

3. Judge Conder erred in granting attorneys fees which are not supported by any evidence? The affidavit filed to support the attorneys fees stated only a bare conclusion that plaintiff's counsel is entitled to \$2,500.00. Said affidavit being a mere conclusion; totally un-supported by any facts or any evidence; and should render the judgment void.

4. Judge Conder erred in granting of additional attorneys fees of \$1,000.00 upon a case which was not appealed to the Utah Supreme Court, and, the granting of attorneys fees that was not

for work done but was of a punitive nature? Said additional grant was not supported by any facts or evidence and should be declared void.

5. Any and all attorneys fees should be paid by Great Equity Insurance Company. Great Equity breached their contract. Great Equity Insurance Company failed to make the payments after Hector Martinez became totally disabled; Great Equity was the wrong doer.

THE TERMINATING OF THE RUNNING OF INTEREST

5. Judge Conder erred in terminating the running of interest on a Supreme Court Order to enter judgment; said judgment having not been entered when the tender was supposedly made. In addition thereto, the draft was a conditional draft which contained a release, and which stated that by endorsement it supposedly satisfied a non-existent judgment; the draft further stated and released Great Equity Life Insurance of any and all claims that existed among the parties. Under these circumstances no tender was ever made; and, the draft was mailed to General Motors Acceptance Corporation, and their attorney, Jay V. Barney, and was never tendered to Hector Martinez, Manuel Rivera or Mark S. Miner, their attorney, in that said draft was never delivered to these defendants or their attorney; when Hector Martinez and Manuel Rivera were advised by letter that Jay V. Barney possessed

the draft said draft was summarily rejected by returning the draft for costs and rejecting all drafts not tendered.(Tr-652)

6. The foregoing facts give rise to the issue - May the Court terminate interest by holding that there was a legal tender under Section 78-27-1, Utah Code Annotated, when said judgment was was never entered; and, the written offer to pay or deliver contained therein a release, and a recitation stating that the draft satisfied all unliquidated judgment and released Great Equity Insurance company of all pending claims and suits.

STATEMENT OF FACTS

This is a replevin action (Tr-2). General Motors Acceptance Corporation sought to replevy and take an automobile purchased by Hector Martinez. Hector Martinez suffered complete kidney failure and was using the automobile to drive to the University Hospital for dialysis three times a week. In order to prevent the taking of the Chevrolet car by the Finance Company, Hector Martinez and his father, Manuel Rivera, filed a good and sufficient replevin bond with the court and the sureties were duly justified by the court (Tr-59). This bond is in the file and is in good standing and is in full force and effect and was duly accepted and approved by the Finance Company (Tr-103).

The replevin action was tried by Judge Dean Conder, who entered judgment against the defendants (Tr-291). This judgment was appealed October 19, 1981 (Tr-326) and reversed by the Utah

Supreme Court May 24, 1983; see Case No. 18072. On February 5, 1982, without notice to the defendants, Judge Dean Conder entered a "Nunc Pro Tunc" judgment against Hector Martinez and Manuel Rivera in the amount of \$4,717.00 and a further amount of \$2,500.00 attorneys fees and court costs of \$127.00 (See Tr-539) This judgment was entered in complete violation of Rule 2.9 of District Court Rules, in that no notice that the judgment had been signed was given to defendant-appellants herein; and since the defendants received no notice of this judgment until after their time to appeal had expired, no appeal was taken from this "Nunc Pro Tunc" judgment, and therefore this judgment should be found to be a void judgment.

On August 15, 1983, the Finance Company's counsel moved the Court for an additional \$1,000.00 attorneys fees for work alleged to have been performed on appeal in the case in chief of GMAC v. Hector Martinez. **This portion of the case was never appealed;** regardless of this fact, Judge Dean Conder granted the Finance Company's attorney an additional \$1,000.00 attorneys fees for work done on appeal and the further reason "that defendants counsel failed to appear at the September 1, 1983 hearing" (Tr-579). On October 13, 1983, counsel for Hector Martinez and Manuel Rivera appealed the granting of the additional \$1,000.00 attorneys fees to the Utah Supreme Court, promptly, and this issue is now a proper issue in this case. The effect of the

District Court judgment allowing an additional \$1,000.00 attorneys fees was to increase the void "Nunc Pro Tunc" judgment of \$2,500.00 attorneys fees. See (Tr-539) awarded February 5, 1982; to \$3,500.00 for appellate work on a case that was never appealed! See (Tr-549). See also the combined notices that the hearing would be postponed to September 22, 1983 (Tr-551;556) and see also (Tr-559;560).

**FACTS CONCERNING THE TERMINATING OF INTEREST ARE AS FOLLOWS
(Tr-670)**

On June 23, 1986, the District Court terminated the running of interest on the Utah Supreme Court judgment by reason of an alleged offer to settle and terminate the above-entitled cause by the Great Equity Insurance Company, allegedly made on November 7, 1983 (Tr-690). The judgment recited that "the offer in writing on November 7, 1983," was a tender under the meaning of Section 78-27-1, Utah Code Annotated, 1953 (Tr-690). Such is not the case. On November 7, 1983, Great Equity Insurance Company's attorney mailed a draft to Jay V. Barney in the amount of \$6,135.36 payable to Hector Martinez, Manuel Rivera, and their attorney Mark S. Miner; and GMAC and its attorney, Jay V. Barney. (This draft was never delivered to, handed to, or tendered to Hector Martinez, Manuel Rivera or Mark S. Miner.) See (Tr-673) also (Tr-670;671.) On this date, November 7, 1983, the Utah Supreme Court judgment was totally unliquidated. On this date, November 7, 1983, the Utah Supreme Court judgment which was then

and there in effect read: "The judgment of the trial Court is reversed and the case is remanded for entry of judgment against Great Equity and in favor of Hector Martinez and Manuel Rivera." The issue of attorneys fees and costs was still pending. See (Tr-607). Please note, that the draft delivered to Jay V. Barney was conditioned upon Hector Martinez and Manuel Rivera terminating their suit against Great Equity Insurance Company and delivering to Great Equity Insurance Company a complete satisfaction of a non-entered judgment (Tr-670). Regardless of this, Judge Dean Conder entered an order on June 23, 1986, that Great Equity Insurance Company "has no responsibility for interest to Hector Martinez and Manuel Rivera from and after November 7, 1983." (Tr-580) The Supreme Court's judgment granting interest was summarily terminated under the claim that there was a "purported" tender.

On November 7, 1983, in fact, no tender was ever made. The facts are Great Equity Insurance Company mailed a draft to Jay V. Barney in the amount of \$6,135.36 (Tr-670). This draft was conditioned upon all parties, including Hector Martinez, Manuel Rivera and Mark S. Miner, their attorney, giving Great Equity Insurance Company a complete release of all claims and all causes of action against Great Equity Insurance Company. This draft was made out to General Motors Acceptance Corporation; Jay V. Barney, their attorney; Hector Martinez; Manuel Rivera and their

their attorney; Hector Martinez; Manuel Rivera and their attorney, Mark S. Miner. This check was never mailed to Mark S. Miner, in fact, it never left Jay V. Barney's office. At this time, November 7, 1983, no judgment had been entered against Great Equity Insurance Company by the District Court **and there was no judgment to be satisfied.** The draft provided, in addition to a complete release of any and all claims and causes of action, that all judgments against Great Equity Insurance Company would be duly satisfied. This tender was void in that there was no judgment entered to be satisfied. also on this date, there were numerous motions pending before the District Court. The only draft that was mailed to the defendants and their attorney was one for court costs (Tr-648); this draft for court costs was returned forthwith! Irregardless of the foregoing rejection of any offers or any tenders; Judge Dean Conder ruled on June 23, 1986, that there was a tender made on November 7, 1983, and that Great Equity's accruing interest on the judgment, which was ordered entered by the Utah Supreme Court, was terminated as of November 7, 1983. An immediate appeal was taken from this order and judgment; and, this is one of the critical issues before the Court.

DETERMINATIVE STATUTES

78-27-1, Utah Code Annotated, 1953. An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.

SUMMARY OF ARGUMENT

Hector Martinez and Manuel Rivera, his father, defendants, appeal from multiple orders and judgments which have been entered by Judge Dean Conder, while the above-entitled cause was pending in the Utah Supreme Court. See 668 P 2d 498 (1983); (Tr-536).

General Motors Acceptance Corporation sued defendants for non-payment of automobile loan in a replevin action; defendant Hector Martinez having lost both kidneys, brought a third-party complaint against Great Equity Insurance Company to enforce disability insurance policy. Judge Conder entered judgment as a matter of law against the defendant in favor of General Motors Acceptance Corporation and against the totally disabled Hector Martinez. This September 23, 1981 judgment was appealed and reversed (Tr-607). On February 5, 1982 a "Nunc Pro Tunc" judgment was signed and entered dating the judgment back to December 4, 1981. No appeal was taken from this "Nunc Pro Tunc" judgment in that it was entered "Nunc Pro Tunc"; without notice to the defendant or their counsel; retroactively dating the judgment

back to December 4, 1981. See (Tr-539). Thereby depriving defendants of their right to appeal; and enlarging the rights of GMAC, by making a judgment that could not be attacked or appealed. See Kettner v. Snow, 13 Utah 2nd 382; 370 P 2d 28.

In the case in chief, the Utah Supreme Court held that Great Equity Insurance Company was estopped from denying the disabled Hector Martinez coverage under the policy. **The case was remanded "for entry of judgment and costs against Great Equity and in favor of defendants."** (Tr-607;534) No judgment was entered until **June 23, 1986**; at which time Judge Dean Conder by an order, **again retroactively** terminated interest on the non-entered ordered judgment as of **November 7, 1983**; and he did by order and judgment **re-enter** the "Nunc Pro Tunc" judgment of February 5, 1982; and he did add another \$1,000.00 (One Thousand Dollars) attorneys fees for appellate work making the total judgment \$3,500.00. (Tr-690). See Utah State Building Board v. Walsh Plumbing, 16 Utah 2d 382; 399 P 2d 141; See also Sieverts v. White, 2 Utah 2d 351, 273 P 2d 974.

Defendants appealed from February 5, 1981 "Nunc Pro Tunc" judgment and from the September 27, 1983 judgment on October 13, 1983. On December 12, 1985, the Utah Supreme Court remanded said cause back to the Trial Court for entry of judgment as set forth in a prior decision. See (Tr-607). With the further instruction that all pending issues were to be ruled upon and after all

matters and issues were adjudicated and after an Order certifying that Rule 54 (b) had been complied with; defendant and appellants would be entitled to a further appeal on all final judgments.

ARGUMENT

THE DISTRICT COURT ERRED IN TERMINATING INTEREST ON SUPREME COURT JUDGMENT (TR-690).

The November 7, 1983, transaction between William Hansen, attorney for Great Equity Insurance Company and Jay V. Barney, attorney for GMAC was not a tender under Section 78-27-1, Utah Code Annotated, 1953 (Tr-690).

There was no tender made on November 7, 1983, by Great Equity Insurance Company to the defendants, Hector Martinez and Manuel Rivera. On November 7, 1983, Great Equity Life Insurance Company mailed a draft in the amount of \$6,135.36, to Jay V. Barney, the attorney for General Motors Acceptance Corporation; this conditional draft was never presented to Mark S. Miner or the defendants herein. This conditional draft was made out to GMAC, Jay V. Barney, Hector Martinez, Manuel Rivera and Mark S. Miner. This check was conditional upon receiving a Satisfaction of judgment from Hector Martinez, Manuel Rivera and Mark S. Miner. No judgment had been entered, and there was no judgment to be satisfied. The tender was void. The Supreme Court of the State of Utah ordered and directed that a judgment be rendered, made and entered, in favor of Hector Martinez and Manuel Rivera and against Great Equity Life Insurance Company. The Supreme Court's

order was never carried out and no judgment was ever entered. There was pending before the Trial Court numerous motions concerning the judgment that attorneys fees. See December 12, 1985 decision (Tr-607).

A tender, to be good, must be free from any conditions which the tender does not have the right to insist upon. See Sieverts v. White, supra. The conditions which Great Equity Insurance did not have the right to insist upon were as follows:

(1) The satisfaction of a judgment which had not been determined and which was unliquidated.

(2) Great Equity Insurance demanded a satisfaction of judgment and a dismissal with prejudice of the defendants lawsuit which was then and there pending before the Court concerning Attorneys fees, interest and costs. See the Utah Supreme Court Decision which returned and remanded said cause to the District Court for the purpose of having a proper judgment entered; said judgment to include attorneys fees, interest and costs.

(3) The Court will note that the draft was never tendered to or given to Hector Martinez, Manuel Rivera or their attorney, Mark S. Miner. The payees were Hector Martinez, Manuel Rivera, Mark S. Miner, GMAC, and their attorney, Jay V. Barney. The draft required a full and complete release of all claims and dismissal of all actions against Great Equity and a satisfaction of judgment from Mark S. Miner. See (Tr-670). On November 28, 1984,

the draft was returned to William J. Hansen, he having been informed that the defendants would not accept the draft under the conditions described and insisted upon by the insurance company.

The Court will note that at no time were there any tenders, offers, checks or drafts given to or offered to Hector Martinez, Manuel Rivera or their attorney, Mark S. Miner, with the exception of a draft for court costs which was returned by reason of it being connected to and made part of the voucher for \$6,135.36. The court costs, in this case, have never been paid and remain outstanding. (Tr-648-651) The offer of Great Equity Insurance Company to terminate the lawsuit was promptly rejected by reason of the unreasonable conditions that were attached to the tender.

(4) At the time the draft was mailed to Jay V. Barney, there was pending before the Trial Court numerous motions all of which were concerned with the proper entry of judgment; while these matters were pending, to wit: on October 13, 1983, Hector Martinez and Manuel Rivera appealed all pending issues to the Utah Supreme Court. Notice of Appeal, a Docketing Statement and a Designation of Record was properly served. All parties and their attorneys were aware of the fact that **the conditional tender had been rejected.** These defendants had always acted promptly and have never waived any rights pending the hearing of the matters referred to the District Court by the Supreme Court.

Section 78-27-1 is a statute which requires strict performance of a legal tender. See 52 Am. Jur. 215, 231, Tender, Sections 2 and 24; also See Sieverts v. White, supra., and cases cited therein. See also 62 CJ 670 Section 38; 36 CJS Tender, Section 27; Woods v. Dixon, 193 OR 628, 240 P 520; Radalj v. Union Savings and Loan, 59 WYO 140, 138 P 2d 984, 141 P 2d 856. The Great Equity Insurance Company had no right to pay the judgment which was granted Hector Martinez and Manuel Rivera directly over to GMAC and their attorney, Jay V. Barney, when the Utah Supreme Court had ordered the entry of judgment against Great Equity Insurance Company and in favor of Hector Martinez and Manuel Rivera along with instructions for the lower Court to re-examine the issue of attorneys fees, interest and costs (Tr-609). The tender made by Great Equity Insurance Company was not made in good faith and was not made in a manner as to most likely, under the circumstances, benefit the defendant, Hector Martinez herein; in fact the tender only benefited the Finance Company and GMAC. Hector Martinez and Manuel Rivera could not have accepted same without suffering irreparable damage. See K & M Inc. v. LeCuyer, Cal. App., 233 P 2d 569; 107 Cal. App. 2d 710, 238 P 2d 28; 107 Cal. App. 2d 845, 238 P 2d 33.

The District Court Judge took a personal offense to being reversed by the Utah Supreme Court (Tr-741).

The Court: "I don't think they (Utah Supreme Court) ruled you (Hector Martinez, Manuel Rivera) should have been paid, they

(Utah Supreme Court) simply ruled that your client should have been notified of a limitation. Wasn't that all they held?"

Mr. Miner: "No sir. They said you were to enter judgment * * * in favor of Hector Martinez and Manuel Rivera and against Great Equity."

The Court: "What about that, Mr. Barney. How are you going to collect on a check if there has never been a judgment entered on it?"

Mr. Barney: "Well that was my first Motion before the Court, your Honor." (Tr-742, April 8, 1986.)

So what did the Court do? Judge Conder, on June 23, 1986, signed the order that plaintiffs were entitled to a judgment against the Great Equity Life Insurance Company in the amount of \$4,717.50, with interest, until fully paid, together with costs of court and attorneys fees in the sum of \$3,500.00, that Hector Martinez and Manuel Rivera are granted judgment against Great Equity Life Insurance Company in the sum of \$4,717.50, with interest thereon up to November 7, 1983 and court costs of \$742.85 and Ordered and Decreed that Great Equity Life may circumvent Hector Martinez and Manuel Rivera; and, as a consequence of the June 23, 1986 proceedings, pay the money directly to General Motors Acceptance Corporation. The Court further entered a Satisfaction of Judgment in which the Court satisfied the judgment that Hector Martinez and Manuel Rivera had against Great Equity Insurance Company (Tr-697;698). All of these acts were done in complete violation of Rule 2.9 and without notice and knowledge of Hector Martinez and Manuel Rivera, the defendants herein and by these "secret" summary proceedings; the defendants were deprived of their Supreme Court judgment, along

with; their right to file proper motions and their right to appeal this questionable conduct. All of the foregoing acts were done in complete disregard to the Replevin Bond and the Supersedeas Bonds which were in the file. See (Tr-58;59;60;599-601.) Defendants pray that these judgments be reversed.

**THE AWARD OF ONE THOUSAND DOLLARS ATTORNEYS FEES FOR
SERVICES RENDERED ON APPEAL, WHEN THE CASE WAS NEVER APPEALED,
SHOULD BE SET ASIDE**

The Utah Supreme Court has consistently held that no attorneys fees should be awarded unless they are supported by evidence of necessity and reasonableness. See Walker v. Sandwick, 548 P 2d 1243 (Utah 1966); Wallace v. Build, Inc., 16 Utah 2d 401, 402 P 2d 699; Freed Finance Co. v. Stoker Motor Company, 537 P 2d 1039. The record is devoid of any supporting evidence to support attorneys fees. This portion of the judgment should be stricken and denied. It is clear that a fee must be supported by evidence in the record. See Richards v. Hodson, 26 Utah 2d 113, 485 P 2d 1044. The award of attorneys fees must be based upon evidence produced in the case in chief and not after. See Gardner v. Christiansen, 622 P 2d 782. The affidavits submitted by GMAC Finance Company were nothing more than mere conclusions. The transcript and record herein is devoid of any evidence concerning

1. The ability of the attorney.
2. The difficulty of the problems involved.
3. The rate charged per hour.
4. The number of hours put in on the case.
5. The amount of money sued for. In fact, there is no evidence to support a judgment for \$3,500.00 attorneys fees. See Richard v. Hodson, supra. also Walker v. Sandwick, supra. Hector Martinez and Manuel Rivera and their counsel, Mark S. Miner, were never given the opportunity to attack the issue of attorneys fees during the trial nor at any time thereafter.

**GREAT EQUITY LIFE INSURANCE COMPANY SHOULD PAY ATTORNEYS
FEES**

Great Equity Life Insurance Company wrongfully refused to make payments as made and provided by the insurance policy even though the policy was current, as far as premiums are concerned and Hector Martinez made all payments under the contract until he was totally disabled. All notices, doctor's reports and necessary papers were properly filed. All insurance premiums were paid in full (Tr-20). The insurance company had thirty days to accept or reject Hector Martinez as an insured (Tr-25). The insurance company denied coverage under the policy eight (8) months after the loss occurred (Tr-163). The insurance policy was in full force and effect when the loss occurred; hence, Great Equity should pay for all defaults including attorneys fees. (see Seigel v. William E. Bookholtz, 419 Fed 2d 720, 723 (DC Circuit, 1969).

In this case, there was little or no investigation. The company did manifest steady determination to abide by its contrary decision; and, for nine (9) months they procrastinated with the delayed investigation which ultimately resulted in the insurance company leaving the ailing Hector Martinez helpless and nine (9) months in arrears in payments as a result of the insurer's withdrawal and denial of his claim. Great Equity Insurance Company failed to comply with the terms of the insurance contract. The insurance company failed to live up to the standard of conduct commensurate with the public nature of the insurance business. Great Equity not only breached their contract of insurance, and thereby wronged its insured, but it completely failed in its public duty. See Egan v. Mutual of Omaha Insurance Company, 24 Cal. 3d 809, 620 P 2d 141, 146, 157 Cal. Rptr. 482 (1979). See also Dinkings v. American National Insurance Company, 92 Cal. App. 3d 222, 154 Cal. Rptr. 775, which held that the insured is entitled to recover that portion of attorneys fees necessary and attributable to recover the amount due under the policy. Great Equity Insurance Company having breached the contract should pay any and all attorneys fees that have been incurred in this suit. Insurance companies are quasi public in nature. Their obligations go beyond meeting the reasonable expectations of coverage. The insurance company acted unreasonably, and in violation of its public duties and its

responsibilities, therefore, it should be responsible for the attorneys fees incurred herein. Defendants attorney, Mark S. Miner, testified in open court as to the time spent in court, pre-trial procedures, preparing the instructions (Tr-757).

THE "NUNC PRO TUNC" JUDGMENT SHOULD BE DECLARED VOID

"Nunc Pro Tunc" is Latin, meaning now for then. It is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done. Perkins v. Hayward, 132 Ind. 95, 31 N.E. 670.

A "Nunc Pro Tunc" entry is an entry made now, of something which was actually previously done, to have effect as of the former date. Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had where entry thereof was omitted through inadvertence or mistake. Perkins v. Perkins, 225 Mass. 392, 114 N.E. 713.

A judgment "Nunc Pro Tunc" may not enlarge the rights or a party nor may it be used to reduce a prescribed time period of to defeat the right to take an appeal. See Kettner v. Snow, supra; Utah State Building Board v. Walsh Plumbing, supra. In the instant case GMAC gave no notice that the "Nunc Pro Tunc" judgment had been signed, hence, the Plaintiff's rights were enlarged and the defendants were deprived of their right to appeal. It was long after the defendants right of appeal had

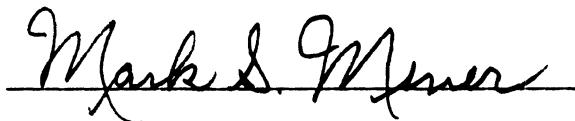
expired before the defendants learned of the signing of the "February 5, 1982" judgment. Rule 2.9 of the District Court Rules was grossly violated by the plaintiff herein. Certainly until notice of the signing of the judgment was given there was no judgment which could be appealed from. The file is devoid of any notice hence the "Nunc Pro Tunc" judgments should be held to be void.

CONCLUSION

The June 23, 1986 Order and Judgment violated Rule 2.9 of the District Court Rules and should be set aside. The "Nunc Pro Tunc" judgment was a void judgment and should be held to be void.

The judgment for attorney fees is void in that it awards appellate fees for a case that was never appealed; in addition thereto, the record is devoid of any evidence of work done or the reasonable value thereof.

Respectfully submitted,



MARK S. MINER
Attorney for Defendants
Hector Martinez and Manuel Rivera
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid four true and correct copies of the foregoing Appellants Brief on Appeal this 12th day of November, 1986, to:

Jay V. Barney, Esq.
45 East Vine Street
Murray, Utah 84107
Attorney for Plaintiff-Respondent
General Motors Acceptance Corporation

William J. Hansen, Esq.
900 Kearns Building
Salt lake City, Utah 84101
Attorney for Third-Party Defendant-Respondent
Great Equity Life Insurance Company

And, that all interested parties were duly served according to law.

A handwritten signature in cursive script, reading "Mark S. Miner", is written over a solid horizontal line.

MARK S. MINER
Attorney for the Defendants
Hector Martinez and Manuel Rivera
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449

ADDENDUM

EXHIBIT "A"
IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

General Motors Acceptance
Corporation, a New York
Corporation,
Plaintiff and Respondent,

No. 18072

F I L E D

May 24, 1983

v.

Hector Martinez and Manuel M.
Rivera,

Defendants and Appellants,

Geoffrey J. Butler, Clerk

v.

Great Equity Life Insurance
Company of Chicago, Illinois;
Streator Chevrolet Company,
Incorporated, Al Barrutia,
Brent H. Jensen, and E. C.
Roseborough,
Third-Party Defendants
and Respondents.

STEWART, Justice:

. This is an action by General Motors Acceptance Corporation (GMAC) for repossession of an automobile and for damages arising from the defendant's default on his promissory note given for the purchase of the automobile. Defendant, Hector Martinez, and his father, Manuel M. Rivera, filed a third-party complaint against Great Equity Insurance Co. to enforce a credit insurance policy written to insure the amount of the loan after Martinez' default because of illness. The trial court entered judgment in favor of GMAC and against Martinez and Rivera, and against Martinez and Rivera on their third-party complaint against Great Equity. The only issue on this appeal is whether a pre-existing illness clause in the insurance policy excluded Hector Martinez from coverage under the policy.

On September 12, 1978, Hector Martinez purchased an automobile on a conditional sales contract from Streater Chevrolet. Martinez was told that as a condition of obtaining a financing contract he had to purchase a credit life and disability insurance policy from Great Equity. The policy designated Martinez as the insured and Streater as the beneficiary, and provided that if because of death, accident, or illness Martinez was unable to make his car payments, Great Equity would pay the remainder of the debt then owing. The premium for the policy was added to the face of the sales contract for the car, and the contract was later

assigned by Streator Chevrolet to GMAC, making GMAC the new beneficiary under the policy.

At the time Martinez purchased the insurance, he did not learn about the exclusion for pre-existing conditions. Streator's agent, Mr. Elton, did not ask him about his past or present health. Martinez was not asked to sign the credit insurance application, which stated the coverage exclusions, nor was he given a copy of the insurance application or the certificate of insurance, although it was Streator's normal business practice to have an insured sign the application and to give him a copy of the insurance certificate. Apparently, Mr. Elton was unable at the time to find the blank credit insurance certificates. Nor were any of the policy exclusions explained to Martinez orally.

The insurance certificate states the policy exclusions. The "pre-existing condition" exclusion provides: "No insurance is provided hereunder . . . if disability results from . . . injury sustained or sickness contracted for which medical diagnosis or treatment was required . . . within six months prior to the effective date [of coverage] of this certificate and which causes a loss within six months after such effective date."

Although it is undisputed that Martinez suffered from high blood pressure prior to his purchase of the insurance policy, Martinez did not misstate or misrepresent his state of health. On the contrary, the agent who filled out the Great Equity insurance application form seemed totally indifferent to Martinez' prior health.

Martinez made two monthly payments on the car prior to suffering a complete kidney failure which resulted in his total disability. He then made a demand on the insurance company to pay the balance owing on the car to GMAC. Pending the outcome of the insurance company's investigation, GMAC deferred collection on its contract. As a result of its investigation, Great Equity denied coverage on the ground that Martinez had suffered high blood pressure prior to his purchase of the car, and the subsequent kidney failure fell within the exclusionary clause of the policy for pre-existing diseases.

GMAC then brought this suit against Martinez. Martinez filed a third-party complaint against Great Equity alleging that it was liable under the insurance contract for the car payments. Great Equity admitted the existence of the insurance contract and denied coverage under the pre-existing sickness exclusion.

The trial court granted judgment against Martinez as a matter of law on the contract for the purchase of the car, and awarded GMAC \$4,717.50 plus interest, costs, and attorney's fees. On the issue of Great Equity's liability under the policy, the trial court submitted seven special interrogatories to the jury. Based on the answers

to those interrogatories, the trial court entered judgment for Great Equity.

In 1961 the Legislature enacted the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance. Laws of Utah 1961, Chap. 67, §1. That act is now found in Title 31, Chap. 34 of U.C.A., 1953. Section 31-34-6(1) states:

All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which . . . shall be delivered to the debtor.

Subsection 2 of that provision specifies what information must be included in the individual policy or group certificate issued to the debtor. Among other things, the policy or group certificate must state the "term and coverage including any exceptions, limitations and restrictions."

Credit life and accident insurance are generally contracts of adhesion which are not negotiated at arms length and which usually contain various provisions for protection of the interests of the insurance company. Because those who purchase such policies rely on the assumption that they are covered by the insurance they buy, the Legislature, in the interest of fair dealing, has deemed it mandatory that an insured be given a copy of the policy so that he can take whatever action is appropriate to protect his interests and be assured that the coverage which he thinks he has contracted for is actually provided. It is not consonant with our statute for an insurance company to accept premiums and then deny liability on the ground of an exclusion of which the insured was not aware because the insurance company had never informed him of the exclusion or given him the means to ascertain its existence.

The purpose of the statutory provision is plain: the insured is entitled to be informed in writing of the essential terms of the insurance contract, especially the exclusionary terms. Because of the reliance that people place on credit insurance policies to mitigate the hardships that often result from inability to pay a debt, the policy of the law is to prevent mistake or misunderstanding as to the terms of the insurance contract, or what in some cases may amount to sharp practice. Frieze v. West American Insurance Co., 188 F.2d 331, 334-335 (8th Cir. 1951) (applying California law). See also Colvin v. Louisiana Hospital Service, Inc., La. App., 321 So. 2d 416 (1975); Traders & General Insurance Co. v. Pacific Employers Insurance Co., 130 Cal. App. 2d 158, 278 P.2d 493, 495 (1955).

In view of these reasons and the unequivocal nature of the duty imposed by §31-34-6, we hold that an

insurance company is estopped from relying upon an exclusion in a policy if the company has failed to deliver the policy or certificate of insurance to the insured or any other document stating the exclusion.

Gardner v. League Life Insurance Co., 48 Mich. App. 574, 210 N.W.2d 897 (1973), was decided under facts almost identical to those that exist in the instant case and is wholly consistent with the result we reach. The insurer sought to avoid paying on a credit insurance policy because of an exclusionary clause in the policy which had never been delivered to the insured. At the time Michigan had a credit insurance act similar to Utah's credit life and accident insurance act. The particular provision which imposed the duty to deliver a copy of the policy was identical to §31-34-6(1). The court construed the Michigan statutory provision to mandate delivery and held that the insurance company was estopped from relying on the policy exclusion because of its failure to comply with the act.

Hayes Truck Lines, Inc. v. Investors Insurance Corp., 257 Or. 602, 525 P.2d 1289 (1974), is also squarely on point. The insurer denied liability on an exclusion in a credit insurance policy for a pre-existing disability. The insurance agent had not inquired as to the status of the insured's health; the insured had not signed or received an application for insurance or a certificate of insurance; and the insured had relied on representations by the insurance company that he was insured. The court held that as a matter of law the insurance company was liable.

The result reached in the instant case is also consistent with the rule laid down by a number of courts that a certificate of insurance or other literature given an insured describing the coverage controls over a master policy not delivered to the insured. E.g., Life Insurance Co. v. Lee, 519 F.2d 475 (8th Cir. 1975); Lecker v. General American Life Insurance Co., 55 Hawaii 624, 525 P.2d 1114 (1974); Republic National Life Insurance Co. v. Blann, 400 S.W.2d 31 (Tex. Civ. App. 1966). See also 6 A.L.R. 4th 839-842 (1981), and cases discussed therein.

Great Equity in this case concedes that Martinez did not sign the application for insurance, which contained the exclusionary language and was made out by its agent at the time Martinez paid his premium, and that Martinez was not told at that time, or at any time, of the exclusion. It asserts, however, that it sent Martinez a copy of the policy. Great Equity's contention that the policy was sent to Martinez is supported by the testimony of its agent who testified that although he could not recall the transaction with Martinez, a copy of the policy is normally sent two or three days after the paper work of the sale is completed.

On the other hand, Martinez and his father testified that no copy was received.

The jury was not requested in so many words to determine specifically whether the policy had been sent. However, a special interrogatory did pose the question whether Martinez either knew or should have known about the exclusion. On this question, the jury did not answer in Great Equity's favor. Since Great Equity had the burden of proof and of persuasion with respect to establishing the exclusion and because Great Equity failed to meet those burdens, the only logical conclusion is that Martinez did not know, nor should he have known of the exclusion.

Finally, Great Equity contends that defendants should have been aware of the exclusion because it is "standard in the industry." That conclusion does not follow. Martinez had not worked in the insurance industry and could hardly have known what was standard in the industry. Further, Great Equity's argument would, for practical purposes, render §31-34-6 a nullity since the contention that proof of what is standard in the industry is sufficient to bind an insured is fundamentally at odds with §31-34-6. "[T]he need for notice is beyond peradventure." Gardner v. League Life Insurance Co., supra, 48 Mich. App. at 577, 210 N.W.2d at 898.

Although estoppel is usually a factual defense, it may be established as a matter of law to preclude an insurance company from relying on an exclusion in a credit life and accident policy. Hayes Truck Lines, Inc. v. Investors Ins. Co., 269 Or. 565, 525 P.2d 1289 (1974); Scribner v. Equitable Life & Casualty Insurance Co., 257 Or. 602, 481 P.2d 76 (1971). On the facts of this case, Great Equity is estopped as a matter of law from denying coverage under the policy.

The judgment of the trial court is reversed and the case remanded for entry of judgment against Great Equity and in favor of Hector Martinez and Manuel M. Rivera.

Costs to appellants.

WE CONCUR:

Richard C. Howe, Justice

Christine M. Durham, Justice

OAKS, Justice: (Dissenting)

I cannot agree that the insurance carrier is "estopped as a matter of law" from relying on the exclusions in its policy because a copy of the policy was not delivered to the debtor-insured. Although the Model Act directs that a copy be delivered to the debtor-insured, U.C.A., 1953, § 31-34-6(1), nothing in that section or in the Act as a whole directs or indicates an intent to rescind the policy exclusions if this requirement is not met. That drastic result should not be decreed by this Court without explicit legislative direction.

The majority's decision injects a new provision into insurance contracts, a provision whose effects are almost impossible to gauge but potentially far-reaching. An agent's failure to deliver a policy or certificate would apparently rescind all policy exclusions, since the majority's reasoning offers no basis to distinguish one exclusion from another. On this insurance contract, that would extend the policy coverage to disabilities resulting from intentionally self-inflicted injuries, flight in nonscheduled aircraft, war or military service, and normal pregnancy. As to life insurance, it would impose coverage for deaths caused by suicide.

The potential effects of the majority's decision are even more far-reaching. The rationale that the insured "is entitled to be informed in writing of the essential terms of the insurance contract" apparently applies to terms of limitation, as well as to terms of exclusion. Consequently, the majority's holding suggests that an insured who could convince a jury that he had not received a copy of the policy might enforce this policy without regard to its provisions on maximum age, gainful employment, limitation of one death benefit in the case of cosigners, and even to some unspecified point beyond the dollar limits of \$15,000 on death benefits and disability payments. Other policy provisions, such as the critical definition of "total disability," would also seem to come under the majority's interdiction if sought to be applied against the insured.

The uncertainties introduced by the majority's decision will provoke litigation and frustrate the kind of loss predictions that are essential to the stability of the insurance industry.

The district court's judgment in favor of the insurance company on the basis of the policy exclusion should be affirmed.

Hall, Chief Justice, concurs in the dissenting opinion of Justice Oaks.

EXHIBIT "B"

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

SEP 23 1981

Jay E. Jensen
William J. Hansen
CHRISTENSEN, JENSEN & POWELL
Attorneys for Third-Party Defendants
Great Equity Life Insurance Company,
Streator Chevrolet, Barrutia and
Jensen
900 Kearns Building
Salt Lake City, Utah 84101
Telephone: 355-3431

W. F. Jensen, Esq., Clerk 3rd Dist. Court
By W. F. Jensen Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GENERAL MOTORS ACCEPTANCE
CORPORATION, a New York
corporation,

Plaintiff,

vs.

HECTOR MARTINEZ and
MANUEL M. RIVERA,

Defendants,

vs.

GREAT EQUITY LIFE INSURANCE
COMPANY OF CHICAGO, ILLINOIS;
STREATOR CHEVROLET COMPANY,
INCORPORATED; AL BARRUTIA,
BRENT H. JENSEN, and E. E.
ROSEBOROUGH,

Third-Party
Defendants

JUDGMENT

Civil No. C-79-4797

The above-entitled action came on regularly for trial in the above-entitled court before the Honorable Dean E. Condor, on September 8, 1981. The plaintiff appeared through its counsel, Jay V. Barney; the defendants by their counsel, Mark S. Miner; and the third-party defendants through their counsel, William J. Hansen. A jury was duly impaneled. Evidence was introduced, the jury instructed, and the matter being fully argued, the case was submitted to the jury, which upon due deliberation returned and made the following:

SPECIAL VERDICT

We the jury in the above-entitled action, find from a preponderance of the evidence, the answers to the questions propounded to us as follows:

1. Was there present in the disability policy obtained by the defendant a pre-existing condition exclusion which excluded coverage if a reasonably prudent person knew or should have known of an injury or sickness or if Hector Martinez knew or should have known of an injury or sickness that required medical diagnosis or treatment within six months prior to the purchase of the policy.

Yes X No

If your answer to question 1 was "yes," then answer the following questions. If your answer to question 1 was "no" then do not answer the following questions.

2. Did Hector Martinez know or should he have known of the pre-existing physical condition exclusion referred to in question 1.

Yes No ~~None~~ Yes 3 No 4

3. Was the pre-existing condition exclusion referred to in question 1 a standard provision in the industry such that a reasonably prudent person or Hector Martinez should have been aware of the provision

Yes X No

If your answer to question 2 or 3 was "yes," then answer question 4. If your answer to questions 2 and 3 was "no," then do not answer the following questions.

4. Did Hector Martinez have an injury or illness for which medical diagnosis or treatment was required.

Yes X No

5. Did Hector Martinez know of the injury or sickness or would a reasonably prudent person have known of the injury or sickness and have sought medical diagnosis or treatment within six months prior to purchasing the disability policy.

Yes X No

If you answered questions 4 and 5 "yes," then answer question 6. If you answered "no" to question 4 or 5 then do not answer the following question.

6. Did the injury or sickness of Mr. Martinez cause a loss within six months after the effective date of the disability policy.

Yes X No

If you answered question 6 "yes" then answer question 7.
If your answer to question 6 was "no" then do not answer the following question.

7. Did Hector Martinez become totally disabled?

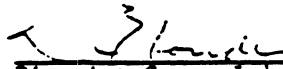
Yes X No

WHEREFORE, upon motion of the defendants, and good cause appearing,

It is hereby ORDERED, ADJUDGED and DECREED that the third-party defendants have judgment against the third-party plaintiff on their complaint of no cause of action.

DATED this 25 day of September, 1981.

BY THE COURT


District Court Judge

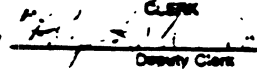
ATTEST
W. STERLING EVANS
CLERK
BY 
Deputy Clerk

EXHIBIT "C"

MARK S. MINER
Attorney for Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: 363-1449

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

GENERAL MOTORS ACCEPTANCE)	ORDER
CORPORATION, a New York)	
Corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
HECTOR MARTINEZ and MANUEL)	
RIVERA,)	
)	
Defendants,)	
)	
GREAT EQUITY LIFE INSURANCE)	
COMPANY OF CHICAGO, et al.,)	
)	
Third-Party Defendants.)	Civil No. C-79-4797

On September 22, 1983 at 8:00 a.m. there came on regularly for hearing the Motion of Great Equity Life Insurance Company for clarification of judgment and the Motion of GMAC and Streater Chevrolet for judgment to provide additional attorney's fees. Jay V. Barney appeared for GMAC, Mark S. Miner appeared for Hector Martinez and Manuel Rivera, and William F. Hansen appeared for Great Equity Life Insurance Company. The matter was set for hearing on August 19, 1983 at 8:00 a.m. and was continued until September 22, 1983 at 8:00 a.m. Jay V. Barney gave Notice on August 25, 1983 that the matter would be continued

to September 1, 1983. Mark S. Miner represented to the Court that he verily believed that all matters were continued until the 22nd day of September, 1983 at 8:00 a.m. by reason of the fact that William F. Hansen was out of town. The matter was duly argued and submitted to the Court for its hearing and determination. The Court being advised of the premises herein, now makes the following Order.

ORDER

After argument of counsel and a review of the memorandums and Supreme Court opinion in the above case, this Court finds that the plaintiff's judgment against defendants Martinez and Rivera still stands. The Supreme Court only considered and reversed the issue on insurance coverage between the defendants and Great Equity Life Insurance. Since the motion for additional attorney's fees was presented by a motion before this Court on September 1, 1983, and defendant's counsel failed to appear at said hearing, this Court will stand on its ruling at that time and grant the additional attorney's fees.

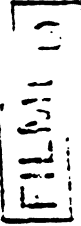
DATED this 27 day of September, 1983.

BY THE COURT

18/ Dean E. Conder
DISTRICT JUDGE

24/51

EXHIBIT "D"



Handwritten signature
DEPUTY CLERK

MARK S. MINER
Attorney for Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: 363-1449


IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION, a New York corporation,	:	NOTICE OF APPEAL TO THE UTAH SUPREME COURT
Plaintiff,	:	
-vs-	:	
HECTOR MARTINEZ, and MANUEL M. RIVERA,	:	
Defendants,	:	
-vs-	:	
GREAT EQUITY LIFE INSURANCE COMPANY OF CHICAGO, ILLINOIS: STREATER CHEVROLET COMPANY, INCORPORATED, AL BARRUTIA, BRENT H. JENSEN, and E. C. ROSEBOROUGH,	:	
Third-Party Defendants.	:	Civil No. C-79-4797

Notice is hereby given that Hector Martinez and Manuel M. Rivera hereby appeal to the Supreme Court of the State of Utah from the Judgment and Order entered by the Honorable Dean E. Conder on the 23rd of September, 1981, which granted a Judgment of No Cause of Action based on a Jury Verdict. The appeal is taken on the law and the fact and appeal is taken on the Judgment in that the Jury rendered a verdict of 3 to 3 in favor of the defendants. Said appeal is taken further on the Order made and entered on October 5, 1981, in which the Court granted a motion dismissing Streater

Chevrolet Company, Incorporated, Brent Jensen and Al Barrutia, with prejudice. Said appeal is taken on the law and the facts; and the case and the cause in its entirety.


MARK S. MINER
Attorney for Hector Martinez
and Manuel M. Rivera


CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy of the foregoing Notice of Appeal to the Utah Supreme Court to:

Jay B. Barney, Esq.
Attorney for Defendants
4294 Poplar Street
Murray, Utah 84107

Dale J. Lambert, Esq.
William J. Hansen, Esq.
Attorneys at Law
900 Kearns Building
Salt Lake City, Utah 84101

and that said Notice of Appeal to the Utah Supreme Court was duly served according to law on this 19th day of October, 1981.


MARK S. MINER

THIRD JUDICIAL DISTRICT
COUNTY OF SALT LAKE - STATE OF UTAH

FILE NO. C79-4797

(✓) PARTIES PRESENT

COUNSEL: (✓) COUNSEL PRESENT

General Motors Acceptance :

Jay V. Barney
~~Mark S. Miner~~

Corporation vs :

Lester Martinez et al :

Mark S. Miner

Great Equity Life Ins. :

William F. Hansen

CLERK

REPORTER

SALIFF

HON. Dean E. Conder

JUDGE

DATE: 9/22/83

After argument of Counsel and a review of the memorandum and Supreme Court opinion in the above case, this court finds that the plaintiff's judgment against defendants Martinez and Rivera still stands. The Supreme Court only considered and reversed the issue on insurance coverage between the defendants and Great Equity Life Ins. Since the motion for additional attorney's fees was presented by a motion before this court on September 1, 1983, and defendant's counsel failed to appear at said hearing, this court will stand on its ruling at that time and grant the additional attorney's fee.

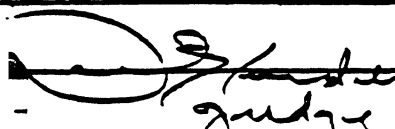

Judge

EXHIBIT "E"

7 min

Exhibit F

EXHIBIT "F"

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

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W. STERLING EVANS CLERK
3RD DIST. COURT
BY DEPUTY CLERK

Jay V. Barney
DAY, BARNEY & TYCKSEN
Attorneys for Plaintiff
45 East Vine Street
Murray, Utah 84107
Telephone: (801) 262-6800

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION, a New York Corporation,	:	<i>24168 NO. 3411</i>
	:	<i>2-8-82 - 8:57 A.M.</i>
Plaintiff,	:	JUDGMENT
vs.	:	
HECTOR MARTINEZ and MANUEL RIVERA,	:	
	:	
Defendants,	:	
	:	
GREAT EQUITY LIFE INSURANCE COMPANY OF CHICAGO, et. al.,	:	Civil No. <u><i>6-79-4797</i></u>
Third-Party Defendants.	:	

The above-entitled case having come before the District Court on the 8th day of September, 1981 for trial, sitting with a jury, and Plaintiff, at the conclusion of all the evidence, having made a Motion for judgement in its favor and against Defendants, Hector Martinez and Manuel Rivera, and the Court having duly considered said Motion and having granted the same, and the Court having entered its Findings of Fact and Conclusions of Law now herewith grants judgment in favor of Plaintiff and against Defendants, Hector Martinez and Manuel Rivera in the sum of \$4,717.50 together with interest from and after September 30, 1981 at the rate of fourteen and 55/100 percent (14.55 %) annual percentage rate until payment thereof together with costs of court in the amount of \$127.00 and attorney's fees in the sum of \$2,500.00.

DATED this *4* ^{*hundredth*} day of December, 1981.

2/5/82

DEAN E. CONDOR
District Judge

ATTEST
W. STERLING EVANS
CLERK

EXHIBIT "F"

EXHIBIT "G"

FILED IN CLERK'S OFFICE
Salt Lake County Utah

Jay V. Barney
DAY, BARNEY & TYCKSEN
Attorneys for Plaintiff
45 East Vine Street
Murray, Utah 84107
Telephone: 262-6800

SEP 22 1981
By R. J. [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION, a New York Corporation,	:	
	:	
Plaintiff,	:	AMENDED JUDGMENT
-vs-	:	
HECTOR MARTINEZ, et al,	:	
	:	
Defendants.	:	
	:	
GREAT EQUITY LIFE INSURANCE COMPANY OF CHICAGO, et al,	:	
	:	
Third-Party Defendants.	:	Civil No. C-79-4797

The above-entitled case having come before the District Court on the 8th day of September, 1981, for trial, sitting with a jury, and plaintiff at the conclusion of all the evidence having made a motion for judgment in its favor and against defendants Hector Martinez and Manuel Rivera, and the Court having duly considered said motion and having granted the same, and the Court having entered its Findings of Fact and Conclusions of Law, and the Court further having heard the motion of counsel for plaintiff to modify and amend the judgment to allow for an additional \$1,000.00 attorney's fees as a consequence of efforts

EXHIBIT "G"

expended by plaintiff's counsel in defending an appeal by defendants and otherwise being advised in the premises, now herewith grants judgment in favor of plaintiff and against defendants Hector Martinez and Manuel Rivera, in the sum of \$4,717.50, together with interest from and after September 30, 1981, at the rate of 14.55% annual percentage rate until payment thereof, and costs of court in the amount of \$127.00, and attorney's fees in the sum of \$3500.00.

DATED this 22 day of September, 1983.

Dean E. Conder
Dean E. Conder
District Judge

ATTEST
H. DEON MCKELIN
BY J. L. - T. L. - L. L.
Clerk Court

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Amended Judgment was placed with The Runner Service "TRS" for delivery to:

Mark S. Miner, Attorney for Defendant
525 Newhouse Building, Salt Lake City, Utah 84111

William F. Hansen, Attorney for Third-Party Defendants
900 Kearns Building, 136 South Main, Salt Lake City, Utah 84101

on this ___ day of September, 1983.

Jay V. Darney
Jay V. Darney

DAVID H. DAY
JAY V. BARNEY
ROBERT C. LILJENQUIST
PHILLIP B. SHELL

DAY & BARNEY
ATTORNEYS AT LAW
45 EAST VINE STREET
MURRAY, UTAH 84107

TELEPHONE:
(801) 262-6800

June 23, 1986

Mr. William J. Hanson
Attorney at Law
900 Kearns Building
136 South Main Street
S.L.C., UT 84101

Mark S. Miner
Attorney at Law
525 Newhouse Building
S.L.C., Ut 84111

Re; General Motors Acceptance Corp.
vs. Hector Martinez vs. Great
Equity Life Insurance.

Dear Bill and Mark:

On June 23, 1986, I went to the Court to determine the status of Entry of Judgment and the Order heretofore submitted by myself to Judge Conder.

Robbie advised that he recalled that the Certification Order of Mr. Miner had been signed but could not recall on the Judgment. I therefore checked with the clerk's office and could not locate the Order or Judgment in process nor was the same found in Judge Conder's office.

I therefore provided the Judge with an original typed copy from our word processor of the Order and Judgment and had the same signed on June 23, 1986.

I do not know whether the Judgment and Order previously submitted was signed following the hearing and could not be located by the clerk with whom I spoke or whether the same has been lost. It may well be that a judgment was signed before June 23, 1986. Inasmuch as there may be an appeal in this case, I point this out to counsel for your review of the Court record rather than relying on this document as being the first Entry of Judgment.

EXHIBIT "H"

000707

Page 2

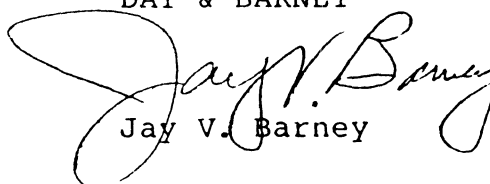
Because this same document had been previously submitted for signature by the Court and represents the same document which was in issue before the Court on Tuesday, June 17, 1986, I have stricken the right to object within ten (10) days inasmuch as the Objection concerning this has already been heard.

If you have any questions, please feel free to contact me.

Again, I advise you to check the court file to see whether a Judgment might have been entered earlier than the 23rd of June, 1986.

Sincerely,

DAY & BARNEY



Jay V. Barney

JVB:sw

000708

MARK S. MINER
Attorney for Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449
UTAH STATE BAR NO.A-2273.

FILED IN CLERKS OFFICE
SALT LAKE COUNTY UTAH

JUN 30 10 45 AM '86

H. D. ... CLERK
BY W. J. ... DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GENERAL MOTORS)	NOTICE OF INTENT
ACCEPTANCE CORPORATION, a)	TO APPEAL TO
New York corporation,)	UTAH SUPREME COURT
)	
Plaintiff,)	
)	
vs.)	
)	
HECTOR MARTINEZ and)	Civil No. C-79-4797
MANUEL RIVERA,)	Judge Dean E. Conder
)	
Defendants.)	
)	
vs.)	
)	
GREAT EQUITY LIFE)	
INSURANCE COMPANY OF)	
CHICAGO, ILLINOIS, STREATOR)	
CHEVROLET COMPANY, INC.,)	
AL BARRUTIA, BRENT H.)	
JENSEN, and E. ROSEBOROUGH,)	
)	
Third Party Defendants.)	

TO THE ABOVE NAMED PLAINTIFF AND THE ABOVE NAMED
THIRD PARTY DEFENDANTS, YOU AND EACH OF YOU WILL PLEASE TAKE
NOTICE:

1. That this attorney has diligently searched the Court files in the
above entitled cause and has been unable to perfect his appeal by reason of the
fact that the proposed final judgment has not been signed or has been lost in the

EXHIBIT "I"

000704

Clerks office and has not been placed in the file; evidently, Jay V. Barney, Plaintiff's attorney experienced the same problem. This attorney checked the clerks file June 26th, 1986; and there was no record of the Judgment therein; hence, an appeal therefrom was not possible. Please see Exhibit "A" which is annexed hereto and by reference made a part hereof.

2. In view of the continuing confusion that has plagued this case; You are **given notice** that the defendant will appeal all orders and judgments promptly as soon as they are placed in the file.

3. You are **further given notice** that the Order in which Judge Conder ruled that the defendant Hector Martinez had been tendered money by the Great Equity Insurance Company and the Order terminating interest will be appealed forthwith; therefore, you should not pay over any funds until this matter is ruled upon by the Utah Supreme Court; Should you do so you are acting at your peril.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark S. Miner", is written over a horizontal line.

MARK S. MINER
Attorney for the Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449

CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing Notice of Intent to appeal, on this 26th day of June, 1986, to the following: William J. Hansen, Esq., 900 Kearns Building, 136 South Main Street, Salt Lake City, Utah 84101; and, Jay V. Barney, Esq., 45 East Vine Street, Murray, Utah 84107. Said documents was duly served according to law by United States Mail.



MARK S. MINER

SALT LAKE COUNTY CLERK
P.O. BOX 1860
SALT LAKE CITY, UTAH 84110

MARK S. MINER
Attorney for the Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449
UTAH STATE BAR NO.A2273.

FILED IN CLERKS OFFICE
SALT LAKE CITY, UTAH

JUL 18 1 05 PM '86

BY *James Petregeorge*
CLERK

0,00
450

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GENERAL MOTORS)
ACCEPTANCE CORPORATION,)
A New York Corporation,)
Plaintiff,)

vs.)

HECTOR MARTINEZ and,)
MANUEL M. RIVERA)
Defendants,)

GREAT EQUITY LIFE)
INSURANCE COMPANY)
OF CHICAGO, ILLINOIS,)
Third Party Defendants.)

NOTICE OF APPEAL
TO UTAH SUPREME COURT

Civil No. ~~C-83-6295~~

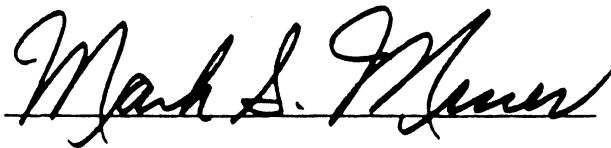
679-4797
Judge Dean Conder

Comes now Hector Martinez and Manual Rivera, Defendants and hereby appeals the Order and the Judgment which was made and entered in the above entitled Court on or about the June 23th 1986. These Defendants further appeal all Orders and all Judgments that have been made and entered by the honorable Dean Conder; the above entitled Court having Certified that said Orders and Judgment are final Orders from which an appeal lies. These defendants specifically appeal from the Judgment granting attorneys fees in favor of General Motors Acceptance Corporation and against Hector Martinez and Manuel M. Rivera. Appeal is further taken from the Court's Order and Judgment awarding Defendants "Nunc Pro Tunc" attorney fees; Judgment dated December 4th, 1981; and signed February 5th, 1982; appeal is further taken from

EXHIBIT "J"

the Court awarding One-Thousand dollars attorney fees on September 27th, 1983; because defendants Counsel failed to appear at a hearing on september 1st, 1983; and appeal is further taken from the Order of the Court that Great Equity Life Insurance Company of Chicago made a tender of a Judgment to the Defendants, no tender having ever been made; said Order having been signed June 23rd 1986; Appeal is further taken from all orders, and from all Judgments which wholly disposes of all claims in this case.

RESPECTFULLY SUBMITTED,

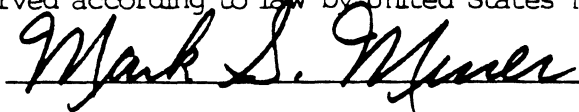


MARK S. MINER

Attorney for the Defendants, Hector Martinez and Manual M. Rivera

CERTIFICATE OF MAILING AND SERVICE

I hereby that I mailed postage prepaid, a true and correct copy of the Notice of Appeal to the Utah Supreme Court, on the 18th day of July 1986, to Jay B. Barney, Attorney for General Motors Acceptance Corporation, 45 East Vine Street, Murray, Utah 84107 and to William J. Hansen, 900 Kearns Building, 130 South Main Street, Salt Lake City, Utah 84101, Attorney for Great Equity Life Insurance Company of Chicago, I further certify that said Notice of Appeal was duly served according to law by United States Mail.



MARK S. MINER

Attorney for the Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449

FILED IN CLERK'S OFFICE
Salt Lake City, Utah

JAY V. BARNEY (0224)
DAY & BARNEY
ATTORNEYS FOR PLAINTIFFS
45 EAST VINE STREET
MURRAY, UTAH 84107
TELEPHONE: 262-6800

AUG 18 1986

H. Dixon Hindley, Clerk 9rd Dist. Court
By R. G. Gotejan
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

GENERAL MOTORS ACCEPTANCE	:	
CORPORATION, a New York	:	
Corporation,	:	
Plaintiff,	:	O R D E R
--VS--	:	
HECTOR MARTINEZ and	:	
MANUEL RIVERA,	:	
Defendants.	:	
GREAT EQUITY LIFE INSURANCE	:	
COMPANY OF CHICAGO, et al.,	:	
Third-Party Defendants.	:	Civil No. C-79-4797

The above-entitled case came before the Court pursuant to notice on Friday, the 16th day of May, 1986, the Honorable Dean E. Conder, Judge, presiding. Mr. Jay V. Barney appeared on behalf of plaintiff, General Motors Acceptance Corporation (GMAC), Mr. Mark Miner appeared on behalf of defendants and Mr. William J. Hansen appeared on behalf of third-party defendant Great Equity Life Insurance Company of Chicago (Great Equity). At issue before the court were the questions of interest, attorney's fees and judgment to be entered as between defendants and third-party plaintiff, Great Equity. Also at issue were the

EXHIBIT "K"

000721

claims of plaintiff for additional attorney's fees to be awarded against defendants and the right of plaintiff to receive payment from third-party defendant Great Equity as a satisfaction of the obligation, which Great Equity Life may owe to defendant.

The claims of plaintiff had been brought before the court at an earlier time and ruling thereon had been deferred for consideration of issues remaining between defendants and third party defendant Great Equity.

Whereupon, the Court having heard the arguments of counsel and having reviewed documents, as well as memoranda submitted, and being advised in the premises, now herewith Orders:

1. Plaintiff shall be entitled to judgment against defendants in the same manner and in accordance with that certain Amended Judgment heretofore entered in the above-entitled Court on the 22nd day of September, 1983, namely for the sum of \$4,717.50, together with interest from and after September 30, 1981, at the rate of 14.55% annual percentage rate until payment thereof and together with costs of court in the amount of \$127.00 and attorney's fees fixed in the sum of \$3,500.00. Plaintiff's claim for additional attorney's fees for services performed subsequent to the date of that judgment is denied.

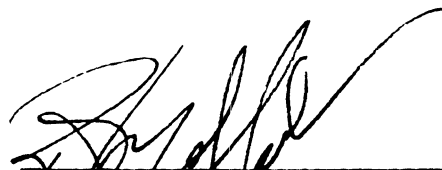
2. That defendants Hector Martinez and Manuel Rivera are entitled to judgment against third-party defendant Great Equity Life in the sum of \$4,717.50, together with interest from and after September 30, 1981, at the rate of 14.55% annual percentage

rate, accruing up to and including November 7, 1983, and together with costs in the sum of \$742.85. No attorney's fees are awarded and the request of defendant for attorney's fees as against Great Equity are specifically denied.

3. That the offer in writing by Great Equity Life of November 7, 1983, together with its submission of checks for payment of principal, interest and costs, constituted a tender within the meaning of Section 78-27-1 Utah Code Annotated (1953), and Great Equity therefore has no responsibility for interest to defendants from and after November 7, 1983.

4. That inasmuch as plaintiff, GMAC, has judgment against defendants in an amount greater than the judgment which defendants have against Great Equity Life, payment by Great Equity Life directly to GMAC of all or any portion of the judgment in favor of GMAC and against defendants shall constitute a satisfaction to the extent of payment made of any portion of the judgment existing in favor of defendants and against Great Equity.

DATED this 15 day of August, 1986.



Dean E. Conder
District Judge

ATTEST
H. DIXON HINDLEY
CLERK
By K. Gotebas
Deputy Clerk

CERTIFICATE OF MAILING AND
NOTICE OF RIGHT OF OBJECTION

I, Jay V. Barney, hereby certify that I did cause a true and correct copy of the foregoing Order to be placed in the United States mails for mailing to:

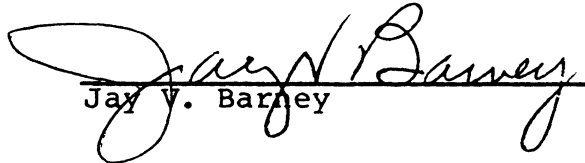
Mark S. Miner, Attorney for Defendants
525 Newhouse Building, Salt Lake City, Utah 84111

William J. Hansen, Attorney for Third-Party Defendant
900 Kearns Building, 136 South Main Street
Salt Lake City, Utah 84101

on this 20 day of May, 1986.

I further do herewith give notice that said Order was duly delivered to the Honorable Dean E. Conder on the 20th day of May, 1986 and that the parties hereto have 10 days in which to file objections to the Order as to form or content and failing to do so that said Order shall be entered.

DATED this 20 day of May, 1986.


Jay V. Barney

JAY V. BARNEY (0224)
DAY & BARNEY
ATTORNEYS FOR PLAINTIFFS
45 EAST VINE STREET
MURRAY, UTAH 84107
TELEPHONE: 262-6800

H. Dixon Hindley, Clerk 3rd Dist. Court
By _____ Deputy Clerk

GENERAL MOTORS ACCEPTANCE
CORPORATION, a New York
Corporation,

--VS--

HECTOR MARTINEZ and
MANUEL RIVERA,

Defendants.

GREAT EQUITY LIFE INSURANCE
COMPANY OF CHICAGO, et al.,

Third-Party Defendants.

8-21-86 3:00 P.M.

10/3/86

JUDGE

This judgment is null & void by reason of it being a duplicate of a prior judgment and having been set aside by the court.

JUDGE

Civil No. C-79-4797

The above-entitled case having come before the District Court on the 8th day of September, 1981, for trial, sitting with a jury, and plaintiff at the conclusion of all the evidence having made a motion for judgment in its favor and against defendants Hector Martinez and Manuel Rivera, and the Court having duly considered said motion and having granted the same, and the Court having entered its findings of fact and conclusions of law with respect thereto, and certain aspects of the case having been further reviewed by the Utah Supreme Court, and matters having been remanded to the District Court for further

EXHIBIT "L"

000725

decision, and the Court having considered motions and arguments of counsel relative to proceedings occurring subsequent to the entry of decision by the Court with respect to plaintiff, as well as motions raised before the Court from the respective parties, and being fully advised in the premises, now herewith grants judgment in favor of plaintiff and against defendants and in favor of defendants and against Great Equity Life Insurance Company of Chicago, as follows:

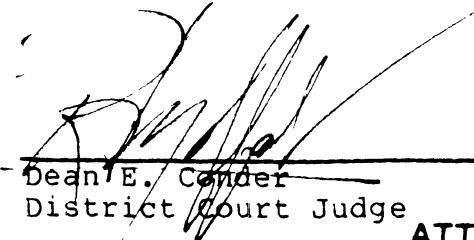
1. Plaintiff shall have and is herewith granted judgment against defendants Hector Martinez and Manuel Rivera, in the sum of \$4,717.50, together with interest from and after September 30, 1981 at the rate of 14.55% annual percentage rate, until the same is fully paid, and together with costs of court in the sum of \$127.00, and for attorney's fees fixed at the sum of \$3,500.00.

2. That defendants Hector Martinez and Manuel Rivera are herewith granted judgment against defendant Great Equity Life Insurance Company in the sum of \$4,717.50, together with interest from and after September 30, 1981, at the rate of 14.55% annual percentage rate, which interest rate shall accrue on the principal sum at said rate up to and including November 7, 1983, and defendants are further granted costs in the sum of \$742.85, and no attorney's fees are awarded.

3. That any payment which third-party defendant Great Equity Life may pay to General Motors Acceptance Corporation as a consequence of these proceedings shall constitute, to the extent

of the payment thereof, a satisfaction of such portion of the judgment of defendants' against Great Equity Life.

DATED this 18 day of August, 1986.



Dean E. Conder
District Court Judge

ATTEST
H. DIXON HINDLEY
CLERK
By R. Grotz
Deputy Clerk

CERTIFICATE OF MAILING AND
NOTICE OF RIGHT OF OBJECTION

I, Jay V. Barney, hereby certify that I did cause a true and correct copy of the foregoing Judgment to be placed in the United States mails for mailing to:

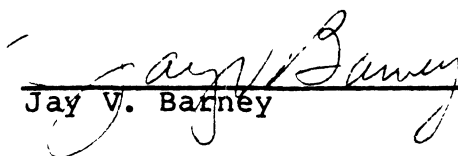
Mark S. Miner, Attorney for Defendants
525 Newhouse Building, Salt Lake City, Utah 84111

William J. Hansen, Attorney for Third-Party Defendant
900 Kearns Building, 136 South Main Street
Salt Lake City, Utah 84101

on this 20th day of May, 1986.

I further do herewith give notice that said Judgment was duly delivered to the Honorable Dean E. Conder on the 20th day of May, 1986 and that the parties hereto have 10 days in which to file objections to the Judgment as to form or content and failing to do so that said Order shall be entered.

DATED this 20 day of May, 1986.



Jay V. Barney

THIRD JUDICIAL DISTRICT

County of Salt Lake - State of Utah

General Motors Acceptance Corp
Plaintiff

Hector Martinez
Defendant

CASE NO: C 71 - 4797

Type of hearing: Div. _____ Annul. _____ Supp. Order _____ OSC _____ Other ☒
 Present: Pltf. _____ Deft. _____
 P. Atty: J. Barney ☒ W. Hansen ☒
 D. Atty: M. Miner ☒
 Sworn & Examined: _____
 Pltf: _____ Deft: _____
 Others: _____
 Summons _____ Stipulation _____
 Waiver _____ Publication _____
☐ Default of Pltf/Deft Entered
 Date: 10/3/86
 Judge: R. Moffat
 Clerk: K. Grolleas
 Reporter: N. Winston
 Bailiff: B. Saiter

ORDERS:

- ☐ Custody Evaluation Ordered ☐ Custody Awarded To _____
☐ Visitation Rights _____
☐ Pltf/Deft Awarded Support \$ _____ x _____ = _____ Per Month
☐ Pltf/Deft Awarded Alimony \$ _____ Per Month/Year ☐ Alimony Waived
☐ Payments to be made through the Clerk's Office: _____
☐ Atty. fees to the _____ in the amount of _____ ☐ Deferred
☐ Home To: _____
☐ Furnishings To: _____ Automobile To: _____
☐ Each Party Awarded their Personal Property
☐ Pltf/Deft. to Maintain Debts and Obligations
☐ Pltf/Deft. to Maintain Insurance on Minor Children
☐ Restraining Order Entered Against _____
☐ Pltf/Deft. Granted Judgment for Arrearage in the Sum of \$ _____
☐ 90-Day Waiting Period is Waived
☐ Divorce Granted To _____ As _____
☐ Decree To Become Final: ☐ Upon Entry ☐ 3-Month Interlocutory
☐ Former Name of _____ Is Restored
☐ Based on the failure of Deft to appear in response to an order of the court and on motion of Pltfs counsel, court orders _____ / _____ shall issue for Deft. _____
 Returnable _____ Bail _____
☐ Based on written stipulation of respective counsel/motion of Plaintiff's counsel, and good cause appearing therefor, court orders the above case be and the same is hereby dismissed without prejudice.
☒ Based on ^{arguments} ~~written stipulation~~ of respective counsel/motion of Plaintiff's counsel, court orders
the order of August 15, 1986 and the
judgment of August 18, 1986 are null and
void as they are exact duplicates of other
signed orders. Mr. Miner to prepare the order.

EXHIBIT "M"

MARK S. MINER
Attorney for Defendants
525 Newhouse Building
Salt Lake City, Utah 84111
Telephone: 363-1449

SLP 6 1979
W Sterling Evans, Clerk of District Court
By Cheryl Redding
Deputy Clerk

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION, a New York Corporation,	:	WRIT UNDERTAKING BOND
	:	
Plaintiff,	:	
	:	
-vs-	:	
	:	
HECTOR MARTINEZ and MANUEL M. RIVERA,	:	
	:	
Defendants,	:	
	:	
-vs-	:	
	:	
GREAT EQUITY LIFE INSURANCE COMPANY OF CHICAGO, ILLINOIS, STREATOR CHEVROLET COMPANY, INCORPORATED, AL BARRUTIA, BRENT JENSEN, and E. C. ROSEBOROUGH,	:	
	:	
Third-Party Plaintiffs.	:	Case No. C-79-4797
	:	

WHEREAS, the plaintiff herein is seeking to obtain possession of defendant's automobile; and,

WHEREAS, under the law, Hector Martinez is entitled to possession of said automobile; and,

WHEREAS, under the law, Hector Martinez is entitled to retain possession of the automobile which the plaintiff seeks to wrongfully take, and pending a hearing of said cause on its merits; the defendant being entitled to possession and seeking possession of said car in order to comply with the law and retain possession of said automobile; and,


WHEREAS, Hector Martinez's desires of having said automobile and personal property delivered to him , and

EXHIBIT "N"


for an Order of Delivery of said property, and to comply with the Utah Rules of Civil Procedures and the Statutes therein;

NOW, THEREFORE, we, the undersigned, residents of Salt Lake County, State of Utah, in consideration of the premises, and of the delivery of the automobile to the defendant herein, we do, jointly and severally, undertake and promise and acknowledge ourselves jointly and severally bound to the plaintiff, General Motors Acceptance Corporation, a Financial Corporation, in the sum of \$6,000; that the said Hector Martinez shall duly prosecute said action, we solemnly agree to pay costs and damages, which may be awarded against him, and to return the property to the General Motors Acceptance Corporation, should the above-entitled Court order Hector Martinez to do so.

DATED this 17 day of August, 1979.


HECTOR MARTINEZ, Principal


MANUEL M. RIVERA, Principal


RAMOS ORTIZ, SURETY


AUGUSTINE LOPEZ, SURETY

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 17 day of August, 1979, there personally appeared before me, Ramos Ortiz and Augustine Lopez, the sureties of Hector Martinez and Manuel M. Rivera, in the

W. G. KIRBY, Esq., Clerk Dist. Court
By Cheryl Redding
Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT IN AND FOR THE COUNTY OF SALT LAKE
STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION,
A NEW YORK CORPORATION

Plaintiff

vs.

HECTOR MARTINEZ AND MANUEL M. RIVERA

Defendant

UNDERTAKING ON CLAIM AND
DELIVERY OF PERSONAL PROPERTY

C79-4797

WHEREAS, it is alleged by the Plaintiff in his complaint and affidavit in the above entitled action, that the Defendant in the said action has in his possession and wrongfully detains certain personal property, as follows, to wit: One (1) 1977 Chevrolet Malibu, 2 door, red, serial no. 1D37L7Z40756, bearing Utah license no. LVB 469 of the value of THREE THOUSAND AND NO/100----- DOLLARS (\$ 3000.00) belonging to the said Plaintiff, to the possession of which the said Plaintiff is lawfully entitled, or the value of SIX THOUSAND AND NO/100----- Dollars (\$ 6000.00)

AND WHEREAS, the said Plaintiff, being desirous of having the said personal property delivered to him and by endorsement in writing upon the affidavit, has required the Sheriff of ~~the County of~~ any County in the, State of Utah, to take the said property from the said Defendant.

NOW, THEREFORE, we the undersigned, NATIONAL SURETY CORPORATION consideration of the premises, and of the delivery of the said property to the said Plaintiff, do hereby undertake and acknowledge to the effect that we are jointly and severally bound in the sum of SIX THOUSAND AND NO/100----- Dollars (\$ 6000.00) being double the value of said property, as stated in the affidavit, for the prosecution of the said action, for the return of the said property to the said Defendant, if the return thereof be adjudged, and for the payment to the said Defendant of such sum as may, from any cause, be recovered against the said Plaintiff.

NATIONAL SURETY CORPORATION submits itself to the jurisdiction of the District Court above and irrevocably appoints the clerk of the said court as its agent, upon whom any papers affecting its liability on this bond may be served, and its liability may be enforced on motion, without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

Date this 25th day of July, 19 79

Annual Premium \$ 60.00

360012-8-67

NATIONAL SURETY CORPORATION
By Clarence T. Brasher
Attorney-in-Fact
Clarence T. Brasher

EXHIBIT "O"

06.7 3 1491
OFFICE OF THE ATTORNEY GENERAL
[Signature]
DEPUTY CLERK

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KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, lately in the Third Judicial Court in [REDACTED]
and for Salt Lake County, in an action pending in said Court


EXHIBIT "P"

between palintiffs and defendants and third party defendants,
a judgment was rendered against Hector Martinez and Manuel
M. Rivera, on the _____ day of _____, 1981,
and the said defendants have taken an appeal to the Supreme
Court of the State of Utah to reverse the said judgment in
the aforesaid action;

NOW, the condition of the above obligation is such
that, if Hector Martinez and Manuel M. Rivera, shall satisfy
the judgment in full, together with the costs and the interest,
if for any reason the appeal is dismissed or the judgment is
affirmed, and shall satisfy in full such modification of the
judgment and such costs and interest as the Supreme Court
may adjudge and award, then the above obligation shall be
void, otherwise to remain in full force and effect.


The above-mentioned sureties submit themselves
to the jurisdiction of the Court and irrevocably appoint
the Clerk of said Court as their agent upon whom any papers
affecting their liability may be served, and this liability
may be enforced by motion and upon such notice as the Court
may require without the necessity of an independent action.

DATED this 27th day of October, 1981.



HECTOR MARTINEZ, Principal


MANUEL M. RIVERA, Principal


EMILIO RAMOS ORTIZ, Surety


AUGUSTINE LOPEZ, Surety

This Supersedeas Bond is subscribed and sworn
to before me this 27th day of October, 1981.


NOTARY PUBLIC
Residing at Salt Lake City, Utah

Commission expires: 12-28-81



MARK S. MINER
Attorney for Defendants
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: 363-1449

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

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H. DIXON JR., CLERK
3RD DIST. COURT

BY *Carlene Matheson*

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

GENERAL MOTORS ACCEPTANCE CORPORATION, a New York corporation,)	SUPERSEDEAS BOND
)	
Plaintiff,)	
)	
vs.)	
)	
HECTOR MARTINEZ and MANUEL M. RIVERA,)	
)	
Defendants,)	
)	
GREAT EQUITY LIFE INSURANCE COMPANY OF CHICAGO, ILLINOIS; STREATOR CHEVROLET COMPANY, INCORPORATED, AL BARRUTIA, BRENT H. JENSEN, and E.C. ROSENBOROUGH,)	
)	
Third-Party Defendants.)	Civil No. C-79-4797

KNOW ALL MEN BY THESE PRESENTS:

That we, Hector Martinez and Manuel M. Rivera, as principals, and Emilio Ramos Ortiz and Augustine Lopez, as sureties, are held and firmly bound unto the above-named defendants in the full and just sum of Seven Thousand Dollars (\$7,000.00), together with interest and costs, to be paid to said plaintiffs and third-party defendants, their successors

EXHIBIT "Q"

and assigns, to which payments well and truly to be made,
we bind ourselves, our heirs, executors, and administrators,
successors and assigns, jointly and severally by these presents.

WHEREAS, lately in the Third Judicial Court in and
for Salt Lake County, in an action pending in said Court between
plaintiffs and defendants and third-party defendants, a judgment
was rendered against Hector Martinez and Manuel M. Rivera, on
the 22nd day of September, 1983, and the said defendants
have taken an appeal to the Supreme Court of the State of Utah
to reverse the said judgment in the aforesaid action;


NOW, the condition of the above obligation is such
that, if Hector Martinez and Manuel M. Rivera, shall satisfy
the full judgment in full, together with the costs and the interest
if for any reason the appeal is dismissed or the judgment is
affirmed, and shall satisfy in full such modification of the
judgment and such costs and interest as the Supreme Court may
adjudge and award, then the above obligation shall be void,
otherwise to remain in full force and effect.

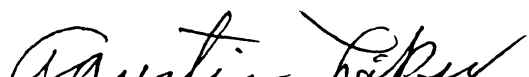
The above-mentioned sureties submit themselves to the
jurisdiction of the Court and irrevocably appoint the Clerk of
said Court as their agent upon whom any papers affecting their
liability may be served, and this liability may be enforced by
motion and upon such notice as the Court may require without the
necessity of an independent action.

DATED this 29 day of September, 1983.


HECTOR MARTINEZ, Principal


MANUEL M. RIVERA, Principal


EMILIO RAMOS ORTIZ, Surety


AUGUSTINE LOPEZ, Surety

SUBSCRIBED AND SWORN TO before me this 29 day of September, 1983.



Mark S. Miner
NOTARY PUBLIC

Commission Expires: 1/12/86

Rules of Practice

The Utah Supreme Court would like to remind the practicing attorneys in Utah that Rule 2.9 of the Rules of Practice for District and Circuit Courts needs to be strictly adhered to. Copies of proposed findings, judgments and/or orders must be served on opposing counsel before being presented to the court for signature unless the court orders otherwise. The mailing certificate should be included on the findings, judgment and/or order submitted to the court. Notice of objections to the findings, judgment or order must be submitted to the trial court within five days of service upon opposing counsel. Rule 2.9 also requires that Judge retain the findings, judgment or order for the 5 day period. Unless Rule 2.9 requirements are met and the judgment or order is signed, there is no final judgment or order which can be appealed to the Supreme Court.

EXHIBIT "R"